

ARMANDO G. YRASUEGUI, PETITIONER, VS. PHILIPPINE AIRLINES, INC., RESPONDENT.

G.R. No. 168081. October 17, 2008

Ponente: REYES, R.T., J.

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REYES, R.T., J.:

THIS case portrays the peculiar story of an international flight steward who was dismissed because of his failure to adhere to the weight standards of the airline company.

He is now before this Court via a petition for review on certiorari claiming that he was illegally dismissed. To buttress his stance, he argues that (1) his dismissal does not fall under 282(e) of the Labor Code; (2) continuing adherence to the weight standards of the company is not a bona fide occupational qualification; and (3) he was discriminated against because other overweight employees were promoted instead of being disciplined.

After a meticulous consideration of all arguments pro and con, We uphold the legality of dismissal. Separation pay, however, should be awarded in favor of the employee as an act of social justice or based on equity. This is so because his dismissal is not for serious misconduct. Neither is it reflective of his moral character.

The Facts

Petitioner Armando G. Yrasuegui was a former international flight steward of Philippine Airlines, Inc. (PAL). He stands five feet and eight inches (5'8") with a large body frame. The proper weight for a man of his height and body structure is from 147 to 166 pounds, the ideal weight being 166 pounds, as mandated by the Cabin and Crew Administration Manual[1] of PAL.

The weight problem of petitioner dates back to 1984. Back then, PAL advised him to go on an extended vacation leave from December 29, 1984 to March 4, 1985 to address his weight concerns. Apparently, petitioner failed to meet the company's weight standards, prompting another leave without pay from March 5, 1985 to November 1985.

After meeting the required weight, petitioner was allowed to return to work. But petitioner's weight problem recurred. He again went on leave without pay from October 17, 1988 to February 1989.

On April 26, 1989, petitioner weighed 209 pounds, 43 pounds over his ideal weight. In line with company policy, he was removed from flight duty effective May 6, 1989 to July 3, 1989. He was formally requested to trim down to his ideal weight and report for weight checks on several dates. He was also told that he may avail of the services of the company physician should he wish to do so. He was advised that his case will be evaluated on July 3, 1989.[2]

On February 25, 1989, petitioner underwent weight check. It was discovered that he gained, instead of losing, weight. He was overweight at 215 pounds, which is 49 pounds beyond the limit. Consequently, his off-duty status

was retained.

On October 17, 1989, PAL Line Administrator Gloria Dizon personally visited petitioner at his residence to check on the progress of his effort to lose weight. Petitioner weighed 217 pounds, gaining 2 pounds from his previous weight. After the visit, petitioner made a commitment^[3] to reduce weight in a letter addressed to Cabin Crew Group Manager Augusto Barrios. The letter, in full, reads:

Dear Sir:

I would like to guaranty my commitment towards a weight loss from 217 pounds to 200 pounds from today until 31 Dec. 1989.

From thereon, I promise to continue reducing at a reasonable percentage until such time that my ideal weight is achieved.

Likewise, I promise to personally report to your office at the designated time schedule you will set for my weight check.

Respectfully Yours,

F/S Armando Yrasuegui^[4]

Despite the lapse of a ninety-day period given him to reach his ideal weight, petitioner remained overweight. On January 3, 1990, he was informed of the PAL decision for him to remain grounded until such time that he satisfactorily complies with the weight standards. Again, he was directed to report every two weeks for weight checks.

Petitioner failed to report for weight checks. Despite that, he was given one more month to comply with the weight requirement. As usual, he was asked to report for weight check on different dates. He was reminded that his grounding would continue pending satisfactory compliance with the weight standards.^[5]

Again, petitioner failed to report for weight checks, although he was seen submitting his passport for processing at the PAL Staff Service Division.

On April 17, 1990, petitioner was formally warned that a repeated refusal to report for weight check would be dealt with accordingly. He was given another set of weight check dates.^[6] Again, petitioner ignored the directive and did not report for weight checks. On June 26, 1990, petitioner was required to explain his refusal to undergo weight checks.^[7]

When petitioner tipped the scale on July 30, 1990, he weighed at 212 pounds. Clearly, he was still way over his ideal weight of 166 pounds.

From then on, nothing was heard from petitioner until he followed up his case requesting for leniency on the latter part of 1992. He weighed at 219 pounds on August 20, 1992 and 205 pounds on November 5, 1992.

On November 13, 1992, PAL finally served petitioner a Notice of Administrative Charge for violation of company standards on weight requirements. He was given ten (10) days from receipt of the charge within which to file his answer and submit controverting evidence.^[8]

On December 7, 1992, petitioner submitted his Answer.^[9] Notably, he did not deny being overweight. What he claimed, instead, is that his violation, if any, had already been condoned by PAL since "no action has been taken by the company" regarding his case "since 1988." He also claimed that PAL discriminated against him because "the company has not been fair in treating the cabin crew members who are similarly situated."

On December 8, 1992, a clarificatory hearing was held where petitioner manifested that he was undergoing a weight reduction program to lose at least two (2) pounds per week so as to attain his ideal weight.[10]

On June 15, 1993, petitioner was formally informed by PAL that due to his inability to attain his ideal weight, "and considering the utmost leniency" extended to him "which spanned a period covering a total of almost five (5) years," his services were considered terminated "effective immediately." [11]

His motion for reconsideration having been denied,[12] petitioner filed a complaint for illegal dismissal against PAL.

Labor Arbiter, NLRC and CA Dispositions

On November 18, 1998, Labor Arbiter Valentin C. Reyes ruled[13] that petitioner was illegally dismissed. The dispositive part of the Arbiter ruling runs as follows:

WHEREFORE, in view of the foregoing, judgment is hereby rendered, declaring the complainant's dismissal illegal, and ordering the respondent to reinstate him to his former position or substantially equivalent one, and to pay him:

- Backwages of Php10,500.00 per month from his dismissal on June 15, 1993 until reinstated, which for purposes of appeal is hereby set from June 15, 1993 up to August 15, 1998 at P651,000.00;
- Attorney's fees of five percent (5%) of the total award.

SO ORDERED.[14]

The Labor Arbiter held that the weight standards of PAL are reasonable in view of the nature of the job of petitioner.[15] However, the weight standards need not be complied with under pain of dismissal since his weight did not hamper the performance of his duties.[16] Assuming that it did, petitioner could be transferred to other positions where his weight would not be a negative factor.[17] Notably, other overweight employees, i.e., Mr. Palacios, Mr. Cui, and Mr. Barrios, were promoted instead of being disciplined.[18]

Both parties appealed to the National Labor Relations Commission (NLRC).[19]

On October 8, 1999, the Labor Arbiter issued a writ of execution directing the reinstatement of petitioner without loss of seniority rights and other benefits.[20]

On February 1, 2000, the Labor Arbiter denied[21] the Motion to Quash Writ of Execution[22] of PAL.

On March 6, 2000, PAL appealed the denial of its motion to quash to the NLRC.[23]

On June 23, 2000, the NLRC rendered judgment[24] in the following tenor:

WHEREFORE, premises considered[,] the Decision of the Arbiter dated 18 November 1998 as modified by our findings herein, is hereby AFFIRMED and that part of the dispositive portion of said decision concerning complainant's entitlement to backwages shall be deemed to refer to complainant's entitlement to his full backwages, inclusive of allowances and to his other benefits or their monetary equivalent instead of simply backwages, from date of dismissal until his actual reinstatement or finality hereof. Respondent is enjoined to manifests (sic) its choice of the form of the reinstatement of complainant, whether physical or through payroll within ten (10) days from notice failing which, the same shall be deemed as complainant's reinstatement through payroll and execution in case of non-payment shall accordingly be issued by the Arbiter. Both appeals of respondent thus, are DISMISSED for utter lack of merit.[25]

According to the NLRC, "obesity, or the tendency to gain weight uncontrollably regardless of the amount of food intake, is a disease in itself." [26] As a consequence, there can be no intentional defiance or serious misconduct by

petitioner to the lawful order of PAL for him to lose weight.[27]

Like the Labor Arbiter, the NLRC found the weight standards of PAL to be reasonable. However, it found as unnecessary the Labor Arbiter holding that petitioner was not remiss in the performance of his duties as flight steward despite being overweight. According to the NLRC, the Labor Arbiter should have limited himself to the issue of whether the failure of petitioner to attain his ideal weight constituted willful defiance of the weight standards of PAL.[28]

PAL moved for reconsideration to no avail.[29] Thus, PAL elevated the matter to the Court of Appeals (CA) via a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure.[30]

By Decision dated August 31, 2004, the CA reversed[31] the NLRC:

WHEREFORE, premises considered, we hereby GRANT the petition. The assailed NLRC decision is declared NULL and VOID and is hereby SET ASIDE. The private respondent's complaint is hereby DISMISSED. No costs.

SO ORDERED.[32]

The CA opined that there was grave abuse of discretion on the part of the NLRC because it "looked at wrong and irrelevant considerations"[33] in evaluating the evidence of the parties. Contrary to the NLRC ruling, the weight standards of PAL are meant to be a continuing qualification for an employee's position.[34] The failure to adhere to the weight standards is an analogous cause for the dismissal of an employee under Article 282(e) of the Labor Code in relation to Article 282(a). It is not willful disobedience as the NLRC seemed to suggest.[35] Said the CA, "the element of willfulness that the NLRC decision cites is an irrelevant consideration in arriving at a conclusion on whether the dismissal is legally proper." [36] In other words, "the relevant question to ask is not one of willfulness but one of reasonableness of the standard and whether or not the employee qualifies or continues to qualify under this standard." [37]

Just like the Labor Arbiter and the NLRC, the CA held that the weight standards of PAL are reasonable.[38] Thus, petitioner was legally dismissed because he repeatedly failed to meet the prescribed weight standards.[39] It is obvious that the issue of discrimination was only invoked by petitioner for purposes of escaping the result of his dismissal for being overweight.[40]

On May 10, 2005, the CA denied petitioner's motion for reconsideration.[41] Elaborating on its earlier ruling, the CA held that the weight standards of PAL are a bona fide occupational qualification which, in case of violation, "justifies an employee's separation from the service." [42]

Issues

In this Rule 45 petition for review, the following issues are posed for resolution:

I.

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT PETITIONER'S OBESITY CAN BE A GROUND FOR DISMISSAL UNDER PARAGRAPH (e) OF ARTICLE 282 OF THE LABOR CODE OF THE PHILIPPINES;

II.

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT PETITIONER'S DISMISSAL FOR OBESITY CAN BE PREDICATED ON THE "BONA FIDE OCCUPATIONAL QUALIFICATION (BFOQ) DEFENSE";

III.

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT PETITIONER WAS NOT UNDULY DISCRIMINATED AGAINST WHEN HE WAS DISMISSED WHILE OTHER OVERWEIGHT CABIN ATTENDANTS WERE EITHER GIVEN FLYING DUTIES OR PROMOTED;

IV.

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED WHEN IT BRUSHED ASIDE PETITIONER'S CLAIMS FOR REINSTATEMENT [AND] WAGES ALLEGEDLY FOR BEING MOOT AND ACADEMIC.[43] (Underscoring supplied)

Our Ruling

I. The obesity of petitioner is a ground for dismissal under Article 282(e) [44] of the Labor Code.

A reading of the weight standards of PAL would lead to no other conclusion than that they constitute a continuing qualification of an employee in order to keep the job. Tersely put, an employee may be dismissed the moment he is unable to comply with his ideal weight as prescribed by the weight standards. The dismissal of the employee would thus fall under Article 282(e) of the Labor Code. As explained by the CA:

x x x [T]he standards violated in this case were not mere "orders" of the employer; they were the "prescribed weights" that a cabin crew must maintain in order to qualify for and keep his or her position in the company. In other words, they were standards that establish continuing qualifications for an employee's position. In this sense, the failure to maintain these standards does not fall under Article 282(a) whose express terms require the element of willfulness in order to be a ground for dismissal. The failure to meet the employer's qualifying standards is in fact a ground that does not squarely fall under grounds (a) to (d) and is therefore one that falls under Article 282(e) - the "other causes analogous to the foregoing."

By its nature, these "qualifying standards" are norms that apply prior to and after an employee is hired. They apply prior to employment because these are the standards a job applicant must initially meet in order to be hired. They apply after hiring because an employee must continue to meet these standards while on the job in order to keep his job. Under this perspective, a violation is not one of the faults for which an employee can be dismissed pursuant to pars. (a) to (d) of Article 282; the employee can be dismissed simply because he no longer "qualifies" for his job irrespective of whether or not the failure to qualify was willful or intentional. x x x[45]

Petitioner, though, advances a very interesting argument. He claims that obesity is a "physical abnormality and/or illness." [46] Relying on *Nadura v. Benguet Consolidated, Inc.*, [47] he says his dismissal is illegal:

Conscious of the fact that Nadura's case cannot be made to fall squarely within the specific causes enumerated in subparagraphs 1(a) to (e), Benguet invokes the provisions of subparagraph 1(f) and says that Nadura's illness - occasional attacks of asthma - is a cause analogous to them.

Even a cursory reading of the legal provision under consideration is sufficient to convince anyone that, as the trial court said, "illness cannot be included as an analogous cause by any stretch of imagination."

It is clear that, except the just cause mentioned in sub-paragraph 1(a), all the others expressly enumerated in the law are due to the voluntary and/or willful act of the employee. How Nadura's illness could be considered as "analogous" to any of them is beyond our understanding, there being no claim or pretense that the same was contracted through his own voluntary act.[48]

The reliance on *Nadura* is off-tangent. The factual milieu in *Nadura* is substantially different from the case at bar. First, *Nadura* was not decided under the Labor Code. The law applied in that case was Republic Act (RA) No.

1787. Second, the issue of flight safety is absent in Nadura, thus, the rationale there cannot apply here. Third, in Nadura, the employee who was a miner, was laid off from work because of illness, i.e., asthma. Here, petitioner was dismissed for his failure to meet the weight standards of PAL. He was not dismissed due to illness. Fourth, the issue in Nadura is whether or not the dismissed employee is entitled to separation pay and damages. Here, the issue centers on the propriety of the dismissal of petitioner for his failure to meet the weight standards of PAL. Fifth, in Nadura, the employee was not accorded due process. Here, petitioner was accorded utmost leniency. He was given more than four (4) years to comply with the weight standards of PAL.

In the case at bar, the evidence on record militates against petitioner's claims that obesity is a disease. That he was able to reduce his weight from 1984 to 1992 clearly shows that it is possible for him to lose weight given the proper attitude, determination, and self-discipline. Indeed, during the clarificatory hearing on December 8, 1992, petitioner himself claimed that "[t]he issue is could I bring my weight down to ideal weight which is 172, then the answer is yes. I can do it now." [49]

True, petitioner claims that reducing weight is costing him "a lot of expenses." [50] However, petitioner has only himself to blame. He could have easily availed the assistance of the company physician, per the advice of PAL. [51] He chose to ignore the suggestion. In fact, he repeatedly failed to report when required to undergo weight checks, without offering a valid explanation. Thus, his fluctuating weight indicates absence of willpower rather than an illness.

Petitioner cites *Bonnie Cook v. State of Rhode Island, Department of Mental Health, Retardation and Hospitals*, [52] decided by the United States Court of Appeals (First Circuit). In that case, Cook worked from 1978 to 1980 and from 1981 to 1986 as an institutional attendant for the mentally retarded at the Ladd Center that was being operated by respondent. She twice resigned voluntarily with an unblemished record. Even respondent admitted that her performance met the Center's legitimate expectations. In 1988, Cook re-applied for a similar position. At that time, "she stood 5'2" tall and weighed over 320 pounds." Respondent claimed that the morbid obesity of plaintiff compromised her ability to evacuate patients in case of emergency and it also put her at greater risk of serious diseases.

Cook contended that the action of respondent amounted to discrimination on the basis of a handicap. This was in direct violation of Section 504(a) of the Rehabilitation Act of 1973, [53] which incorporates the remedies contained in Title VI of the Civil Rights Act of 1964. Respondent claimed, however, that morbid obesity could never constitute a handicap within the purview of the Rehabilitation Act. Among others, obesity is a mutable condition, thus plaintiff could simply lose weight and rid herself of concomitant disability.

The appellate Court disagreed and held that morbid obesity is a disability under the Rehabilitation Act and that respondent discriminated against Cook based on "perceived" disability. The evidence included expert testimony that morbid obesity is a physiological disorder. It involves a dysfunction of both the metabolic system and the neurological appetite - suppressing signal system, which is capable of causing adverse effects within the musculoskeletal, respiratory, and cardiovascular systems. Notably, the Court stated that "mutability is relevant only in determining the substantiality of the limitation flowing from a given impairment," thus "mutability only precludes those conditions that an individual can easily and quickly reverse by behavioral alteration."

Unlike Cook, however, petitioner is not morbidly obese. In the words of the District Court for the District of Rhode Island, Cook was sometime before 1978 "at least one hundred pounds more than what is considered appropriate of her height." According to the Circuit Judge, Cook weighed "over 320 pounds" in 1988. Clearly, that is not the case here. At his heaviest, petitioner was only less than 50 pounds over his ideal weight.

In fine, We hold that the obesity of petitioner, when placed in the context of his work as flight attendant, becomes

an analogous cause under Article 282(e) of the Labor Code that justifies his dismissal from the service. His obesity may not be unintended, but is nonetheless voluntary. As the CA correctly puts it, "[v]oluntariness basically means that the just cause is solely attributable to the employee without any external force influencing or controlling his actions. This element runs through all just causes under Article 282, whether they be in the nature of a wrongful action or omission. Gross and habitual neglect, a recognized just cause, is considered voluntary although it lacks the element of intent found in Article 282(a), (c), and (d)."[54]

II. The dismissal of petitioner can be predicated on the bona fide occupational qualification defense.

Employment in particular jobs may not be limited to persons of a particular sex, religion, or national origin unless the employer can show that sex, religion, or national origin is an actual qualification for performing the job. The qualification is called a bona fide occupational qualification (BFOQ).[55] In the United States, there are a few federal and many state job discrimination laws that contain an exception allowing an employer to engage in an otherwise unlawful form of prohibited discrimination when the action is based on a BFOQ necessary to the normal operation of a business or enterprise.[56]

Petitioner contends that BFOQ is a statutory defense. It does not exist if there is no statute providing for it.[57] Further, there is no existing BFOQ statute that could justify his dismissal.[58]

Both arguments must fail.

First, the Constitution,[59] the Labor Code,[60] and RA No. 7277[61] or the Magna Carta for Disabled Persons[62] contain provisions similar to BFOQ.

Second, in *British Columbia Public Service Employee Commission (BSPSERC) v. The British Columbia Government and Service Employees' Union (BCGSEU)*,[63] the Supreme Court of Canada adopted the so-called "Meiorin Test" in determining whether an employment policy is justified. Under this test, (1) the employer must show that it adopted the standard for a purpose rationally connected to the performance of the job;[64] (2) the employer must establish that the standard is reasonably necessary[65] to the accomplishment of that work-related purpose; and (3) the employer must establish that the standard is reasonably necessary in order to accomplish the legitimate work-related purpose. Similarly, in *Star Paper Corporation v. Simbol*,[66] this Court held that in order to justify a BFOQ, the employer must prove that (1) the employment qualification is reasonably related to the essential operation of the job involved; and (2) that there is factual basis for believing that all or substantially all persons meeting the qualification would be unable to properly perform the duties of the job.[67]

In short, the test of reasonableness of the company policy is used because it is parallel to BFOQ.[68] BFOQ is valid "provided it reflects an inherent quality reasonably necessary for satisfactory job performance." [69]

In *Duncan Association of Detailman-PTGWTO v. Glaxo Wellcome Philippines, Inc.*,[70] the Court did not hesitate to pass upon the validity of a company policy which prohibits its employees from marrying employees of a rival company. It was held that the company policy is reasonable considering that its purpose is the protection of the interests of the company against possible competitor infiltration on its trade secrets and procedures.

Verily, there is no merit to the argument that BFOQ cannot be applied if it has no supporting statute. Too, the Labor Arbiter,[71] NLRC,[72] and CA[73] are one in holding that the weight standards of PAL are reasonable. A common carrier, from the nature of its business and for reasons of public policy, is bound to observe extraordinary diligence for the safety of the passengers it transports.[74] It is bound to carry its passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with due regard for all the circumstances.[75]

The law leaves no room for mistake or oversight on the part of a common carrier. Thus, it is only logical to hold that the weight standards of PAL show its effort to comply with the exacting obligations imposed upon it by law by virtue of being a common carrier.

The business of PAL is air transportation. As such, it has committed itself to safely transport its passengers. In order to achieve this, it must necessarily rely on its employees, most particularly the cabin flight deck crew who are on board the aircraft. The weight standards of PAL should be viewed as imposing strict norms of discipline upon its employees.

In other words, the primary objective of PAL in the imposition of the weight standards for cabin crew is flight safety. It cannot be gainsaid that cabin attendants must maintain agility at all times in order to inspire passenger confidence on their ability to care for the passengers when something goes wrong. It is not farfetched to say that airline companies, just like all common carriers, thrive due to public confidence on their safety records. People, especially the riding public, expect no less than that airline companies transport their passengers to their respective destinations safely and soundly. A lesser performance is unacceptable.

The task of a cabin crew or flight attendant is not limited to serving meals or attending to the whims and caprices of the passengers. The most important activity of the cabin crew is to care for the safety of passengers and the evacuation of the aircraft when an emergency occurs. Passenger safety goes to the core of the job of a cabin attendant. Truly, airlines need cabin attendants who have the necessary strength to open emergency doors, the agility to attend to passengers in cramped working conditions, and the stamina to withstand grueling flight schedules.

On board an aircraft, the body weight and size of a cabin attendant are important factors to consider in case of emergency. Aircrafts have constricted cabin space, and narrow aisles and exit doors. Thus, the arguments of respondent that "[w]hether the airline's flight attendants are overweight or not has no direct relation to its mission of transporting passengers to their destination"; and that the weight standards "has nothing to do with airworthiness of respondent's airlines," must fail.

The rationale in *Western Air Lines v. Criswell*[76] relied upon by petitioner cannot apply to his case. What was involved there were two (2) airline pilots who were denied reassignment as flight engineers upon reaching the age of 60, and a flight engineer who was forced to retire at age 60. They sued the airline company, alleging that the age-60 retirement for flight engineers violated the Age Discrimination in Employment Act of 1967. Age-based BFOQ and being overweight are not the same. The case of overweight cabin attendants is another matter. Given the cramped cabin space and narrow aisles and emergency exit doors of the airplane, any overweight cabin attendant would certainly have difficulty navigating the cramped cabin area.

In short, there is no need to individually evaluate their ability to perform their task. That an obese cabin attendant occupies more space than a slim one is an unquestionable fact which courts can judicially recognize without introduction of evidence.[77] It would also be absurd to require airline companies to reconfigure the aircraft in order to widen the aisles and exit doors just to accommodate overweight cabin attendants like petitioner.

The biggest problem with an overweight cabin attendant is the possibility of impeding passengers from evacuating the aircraft, should the occasion call for it. The job of a cabin attendant during emergencies is to speedily get the passengers out of the aircraft safely. Being overweight necessarily impedes mobility. Indeed, in an emergency situation, seconds are what cabin attendants are dealing with, not minutes. Three lost seconds can translate into three lost lives. Evacuation might slow down just because a wide-bodied cabin attendant is blocking the narrow aisles. These possibilities are not remote.

Petitioner is also in estoppel. He does not dispute that the weight standards of PAL were made known to him prior to his employment. He is presumed to know the weight limit that he must maintain at all times.[78] In fact, never did he question the authority of PAL when he was repeatedly asked to trim down his weight. *Bona fides exigit ut quod convenit fiat*. Good faith demands that what is agreed upon shall be done. *Kung ang tao ay tapat kanyang tutuparin ang napagkasunduan*.

Too, the weight standards of PAL provide for separate weight limitations based on height and body frame for both male and female cabin attendants. A progressive discipline is imposed to allow non-compliant cabin attendants sufficient opportunity to meet the weight standards. Thus, the clear-cut rules obviate any possibility for the commission of abuse or arbitrary action on the part of PAL.

III. Petitioner failed to substantiate his claim that he was discriminated against by PAL.

Petitioner next claims that PAL is using passenger safety as a convenient excuse to discriminate against him.[79] We are constrained, however, to hold otherwise. We agree with the CA that "[t]he element of discrimination came into play in this case as a secondary position for the private respondent in order to escape the consequence of dismissal that being overweight entailed. It is a confession-and-avoidance position that impliedly admitted the cause of dismissal, including the reasonableness of the applicable standard and the private respondent's failure to comply." [80] It is a basic rule in evidence that each party must prove his affirmative allegation.[81]

Since the burden of evidence lies with the party who asserts an affirmative allegation, petitioner has to prove his allegation with particularity. There is nothing on the records which could support the finding of discriminatory treatment. Petitioner cannot establish discrimination by simply naming the supposed cabin attendants who are allegedly similarly situated with him. Substantial proof must be shown as to how and why they are similarly situated and the differential treatment petitioner got from PAL despite the similarity of his situation with other employees.

Indeed, except for pointing out the names of the supposed overweight cabin attendants, petitioner miserably failed to indicate their respective ideal weights; weights over their ideal weights; the periods they were allowed to fly despite their being overweight; the particular flights assigned to them; the discriminating treatment they got from PAL; and other relevant data that could have adequately established a case of discriminatory treatment by PAL. In the words of the CA, "PAL really had no substantial case of discrimination to meet." [82]

We are not unmindful that findings of facts of administrative agencies, like the Labor Arbiter and the NLRC, are accorded respect, even finality.[83] The reason is simple: administrative agencies are experts in matters within their specific and specialized jurisdiction.[84] But the principle is not a hard and fast rule. It only applies if the findings of facts are duly supported by substantial evidence. If it can be shown that administrative bodies grossly misappreciated evidence of such nature so as to compel a conclusion to the contrary, their findings of facts must necessarily be reversed. Factual findings of administrative agencies do not have infallibility and must be set aside when they fail the test of arbitrariness.[85]

Here, the Labor Arbiter and the NLRC inexplicably misappreciated evidence. We thus annul their findings.

To make his claim more believable, petitioner invokes the equal protection clause guaranty [86] of the Constitution. However, in the absence of governmental interference, the liberties guaranteed by the Constitution cannot be invoked.[87] Put differently, the Bill of Rights is not meant to be invoked against acts of private individuals.[88] Indeed, the United States Supreme Court, in interpreting the Fourteenth Amendment, [89] which is the source of our equal protection guarantee, is consistent in saying that the equal protection erects no shield against private conduct, however discriminatory or wrongful.[90] Private actions, no matter how egregious,

cannot violate the equal protection guarantee.[91]

IV. The claims of petitioner for reinstatement and wages are moot.

As his last contention, petitioner avers that his claims for reinstatement and wages have not been mooted. He is entitled to reinstatement and his full backwages, "from the time he was illegally dismissed" up to the time that the NLRC was reversed by the CA.[92]

At this point, Article 223 of the Labor Code finds relevance:

In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.

The law is very clear. Although an award or order of reinstatement is self-executory and does not require a writ of execution,[93] the option to exercise actual reinstatement or payroll reinstatement belongs to the employer. It does not belong to the employee, to the labor tribunals, or even to the courts.

Contrary to the allegation of petitioner that PAL "did everything under the sun" to frustrate his "immediate return to his previous position,"[94] there is evidence that PAL opted to physically reinstate him to a substantially equivalent position in accordance with the order of the Labor

Arbiter.[95] In fact, petitioner duly received the return to work notice on February 23, 2001, as shown by his signature.[96]

Petitioner cannot take refuge in the pronouncements of the Court in a case[97] that "[t]he unjustified refusal of the employer to reinstate the dismissed employee entitles him to payment of his salaries effective from the time the employer failed to reinstate him despite the issuance of a writ of execution"[98] and "'even if the order of reinstatement of the Labor Arbiter is reversed on appeal, it is obligatory on the part of the employer to reinstate and pay the wages of the employee during the period of appeal until reversal by the higher court.'"[99] He failed to prove that he complied with the return to work order of PAL. Neither does it appear on record that he actually rendered services for PAL from the moment he was dismissed, in order to insist on the payment of his full backwages.

In insisting that he be reinstated to his actual position despite being overweight, petitioner in effect wants to render the issues in the present case moot. He asks PAL to comply with the impossible. Time and again, the Court ruled that the law does not exact compliance with the impossible.[100]

V. Petitioner is entitled to separation pay.

Be that as it may, all is not lost for petitioner.

Normally, a legally dismissed employee is not entitled to separation pay. This may be deduced from the language of Article 279 of the Labor Code that "[a]n employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement." Luckily for petitioner, this is not an ironclad rule.

Exceptionally, separation pay is granted to a legally dismissed employee as an act "social justice,"[101] or based on "equity." [102] In both instances, it is required that the dismissal (1) was not for serious misconduct; and (2) does not reflect on the moral character of the employee.[103]

Here, We grant petitioner separation pay equivalent to one-half (1/2) month's pay for every year of service.[104] It should include regular allowances which he might have been receiving.[105] We are not blind to the fact that he was not dismissed for any serious misconduct or to any act which would reflect on his moral character. We also recognize that his employment with PAL lasted for more or less a decade.

WHEREFORE, the appealed Decision of the Court of Appeals is AFFIRMED but MODIFIED in that petitioner Armando G. Yrasuegui is entitled to separation pay in an amount equivalent to one-half (1/2) month's pay for every year of service, which should include his regular allowances.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Nachura, JJ., concur.

[1] Rollo, p. 136; Annex "A" of Annex "G."

The Cabin Crew Administration Manual of PAL provides:

"C. A cabin crew one (1) to four (4) pounds over his/her weight maximum shall be given a verbal warning and a two (2)-week period in which to meet weight standards.

- A record of the verbal warning shall be maintained in the cabin crew's permanent file.
- A cabin crew who fails to progress shall be given a written letter and an additional two (2)-week period to meet weight standards.
- A cabin crew who fails to reach the prescribed weights standard as required shall be removed from schedule.
- A cabin crew who has been removed from schedule shall report to his/her assigned Check Cabin Crew for a weight check every two (2) weeks and will be required to lose two (2) pounds per week.
- A cabin crew who fails to reach his/her required weight standard within a maximum period of ninety (90) days shall be terminated.
- A cabin crew will return to active flight duty when he/she has reduced to his/her maximum weight requirement.
- A cabin crew who returns to active flight duty after being removed from schedule and within the following three (3) months exceeds the maximum weight standard will be removed from schedule until he/she reached his/her maximum allowable standard.

D. A cabin crew who is five (5) pounds or more over his/her weight maximum will be given a written letter and a two (2) week period to show substantial weight reduction to meet standards. At the end of the initial two (2) weeks period, a cabin crew who has shown progress will continue on weight check until he/she reached his/her maximum allowable standard.

- Cabin crew who fails to show substantial weight reduction shall be removed from schedules.
- Refer to letter C above for discipline guideline.
- A cabin crew who is ten (10) pounds or more over his/her weight maximum shall be removed from schedule immediately."

M E N

HEIGHT FEET inches w/o shoes

SMALL FRAME**MEDIUM FRAME****LARGE FRAME**

Five 7

128-137

134-147

142-161

8

132-141

138-152

147-166

9

136-145

142-156

151-170

10

140-150

146-160

155-174

11

144-154

150-165

159-179

Six 0

148-158

154-170

164-184

1

152-162

158-175

168-189

2

156-167

162-180

173-194

3

160-171

167-185

178-199

4

164-175

172-190

180-204

W O M E N

HEIGHT FEET inches w/o shoes

SMALL FRAME

MEDIUM FRAME

LARGE FRAME

Five 2

102-110

107-119

115-131

3

105-113

110-122

118-134

4

108-116

113-126

121-138

5

111-119

116-130

125-142

6

114-123

120-135

129-146

7

118-127

124-139

133-150

8

122-131

128-143

137-154

9

126-135

132-147

141-158

10

130-140

136-151

145-163

11

134-144

144-159

153-173

[2] Annex "C" of Annex "G."

[3] Annex "D" of Annex "G."

[4] Rollo, p. 139.

[5] Annex "E" of Annex "G."

[6] Annex "F" of Annex "G."

[7] Annex "G" of Annex "G."

[8] Annex "H" of Annex "G."

[9] Annex "J" of Annex "G."

[10] Annex "K" of Annex "G."

[11] Annex "M" of Annex "G."

[12] Annex "N" of Annex "G."

[13] Rollo, pp. 94-99; Annex "E." NLRC NCR Case No. 00-05-03078-96-A, promulgated on November 18, 1998.

[14] Id. at 99.

[15] Id. at 96.

[16] Id. at 96-98.

[17] Id. at 98.

[18] Id.

[19] Annexes "N" and "O."

[20] Annex "Q."

[21] Annex "U."

[22] Annex "R."

[23] Annex "V."

[24] Rollo, pp. 76-88; Annex "C." NLRC NCR Case No. 019725-99, promulgated on June 23, 2000. Penned by Commissioner Alberto R. Quimpo and concurred in by Commissioner Vicente S.E. Veloso.

[25] Id. at 87-88.

[26] Id. at 83.

[27] Id.

[28] Id. at 83-86.

[29] Annex "E."

[30] Annex "BB."

[31] Rollo, 46-64; Annex "A." CA-G.R. SP No. 63027, promulgated on August 31, 2004. Penned by Associate Justice Arturo D. Brion (now a member of this Court), with Associate Justices Delilah Vidallon-Magtolis and Eliezer R. De los Santos, concurring.

[32] Id. at 64.

[33] Id. at 60.

[34] Id. at 61.

[35] Id.

[36] Id.

[37] Id.

[38] Id. at 62.

[39] Id.

[40] Id.

[41] Annex "B."

[42] Rollo, p. 70.

[43] Id. at 659-660.

[44] Termination by employer. - An employer may terminate an employment for any of the following causes.

- a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- b) Gross and habitual neglect by the employee of his duties;
- c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
- e) Other causes analogous to the foregoing.

[45] Id. at 60-61.

[46] Id. at 663.

[47] G.R. No. L-17780, August 24, 1962, 5 SCRA 879.

[48] *Nadura v. Benguet Consolidated, Inc.*, id. at 881-882.

[49] Rollo, p. 153.

[50] Id.

[51] Id. at 137.

[52] 10 F. 3d 17, 20 (1st Cir. 1993).

[53] (a) Promulgation of rules and regulations

No otherwise qualified individual with handicaps in the United States, as defined in section 706(8) of this title, shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each

such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

[54] *Id.* at 71.

[55] Black's Law Dictionary, 6th ed.

[56] 45A Am. Jur. 2d, Job Discrimination, § 269.

[57] Rollo, p. 669.

[58] *Id.* at 670.

[59] Constitution (1987), Art. XIII, Sec. 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns to investments, and to expansion and growth.

[60] ART. 3. Declaration of Basic Policy. - The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.

[61] Approved on March 24, 1992.

[62] Sec. 32. Discrimination of Employment. - No entity, whether public or private shall discriminate against a qualified disabled person by reason of disability in regard to job application procedures, the hiring, promotion, or discharge of employees compensation, job training and other terms, conditions and privileges of employment. The following constitute acts of discrimination:

a)

Limiting, segregating or classifying a disabled job applicant in such a manner that adversely affects his work opportunities;

b)

Using qualification standards, employment tests or other selection criteria that screen out or tend to screen out a disabled person unless such standards, tests or other selection criteria are shown to be related for the position in question and are consistent with business necessity;

c)

Utilizing standards, criteria, or methods of administration that:

1)

have the effect of discrimination on the basis of disability; or

2)

perpetuate the discrimination of others who are the subject to common administrative control.

d)

Providing less compensation, such as salary, wage or other forms of remuneration and fringe benefits, to qualified disabled employee, by reason of his disability, than the amount to which a non-disabled person performing the same work is entitled;

e)

Favoring a non-disabled employee over a qualified disabled employee with respect to promotion, training opportunities, study and scholarship grants, solely on account of the latter's disability;

f)

Re-assigning or transferring a disabled employee to a job or position he cannot perform by reason of his disability;

g)

Dismissing or terminating the services of a disabled employee by reason of his disability unless the employer can prove that he impairs the satisfactory performance of the work involved to the prejudice of the business entity; Provided, however, That the employer first sought to provide reasonable accommodations for the disabled persons;

h)

Failing to select or administer in the most effective manner employment tests which accurately reflect the skills, aptitude or other factor of the disabled applicant or employee that such test purports to measure, rather than the impaired sensory, manual or speaking skills of such applicant or employee, if any; and

i)

Excluding disabled persons from membership in labor unions or similar organizations.

[63] 3 SCR 3 (1999).

[64] The focus is not on the validity of the particular standard but rather on the validity of its more general purpose.

[65] To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to accommodate individual employees sharing the characteristics of the claimant without imposing undue hardship on the employer.

[66] G.R. No. 164774, April 12, 2006, 487 SCRA 228.

[67] *Star Paper Corporation v. Simbol*, id. at 242-243, citing *Flood, R.G. and Cahill, K.A., The River Bend Decision and How It Affects Municipalities' Personnel Rule and Regulations* (June 1993), *Illinois Municipal Review*, p. 7.

[68] Id. at 243.

[69] *Philippine Telegraph and Telephone Company v. National Labor Relations Commission*, G.R. No. 118978, May 23, 1997, 272 SCRA 596, 613.

[70] G.R. No. 162994, September 17, 2004, 438 SCRA 343.

[71] Rollo, p. 96. "In light of the nature of complainant's function as a cabin flight crew member, the setting of weight standard by company policy finds relevance, and in fact, reasonableness. But in judging what is reasonably set for a cabin crew member to comply should not be viewed in isolation from its obvious ultimate objective, which is to maintain agility at all time while on flight, especially in time of emergencies, effect to grooming merely secondary. x x x"

[72] Id. at 84. "Observe that the reasonableness of the rule [i.e., the weight standards of PAL] was already established with his [i.e., the Labor Arbiter] finding - to which we agree - that the aim thereof is to maintain their agility to as to assure the air safety of passengers, as well by his finding of the parties unanimity in the correctness of the weight range that should be observed by complainant as prescribed in the rule. x x x"

[73] Id. at 61-62. "While the private respondent disputes in his position paper the reasonableness of PAL's weight standards, the NLRC's assailed decision finds the weight standard to be valid and reasonable. In our view, this is a fair and correct assessment as the weight limits are not whimsical standards. They are standards put in place by an air carrier for reasons of safety in order to comply with the extraordinary diligence in the care of passengers that the law exacts. x x x"

[74] Civil Code, Art. 1733.

[75] Id., Art. 1755. Thus, in case of death or injuries to passengers, a common carrier is presumed to have been at fault or to have acted negligently, unless it proves that it observed extraordinary diligence. (Id., Art. 1756)

Not only that. The responsibility of a common carrier for the safety of passengers cannot be dispensed with or lessened by stipulation, by the posting of notices, by statements on tickets, or otherwise. (Id., Art. 1757) So much so that when a passenger is carried gratuitously, a stipulation limiting the liability for negligence of a common carrier is valid, but not for willful acts or gross negligence. (Id., Art. 1758) Even a reduction of fare does not justify any limitation of the liability of the common carrier. (Id.)

The burden that the law imposes on a common does not stop there. A common carrier is liable for the death or injuries to passengers through the negligence or willful acts of its employees. (Id., Art. 1759) This liability attaches although such employees may have acted beyond the scope of their authority or in violation of the orders of the common carrier. (Id.) Truly, the requirement of the law is very strict in that the liability of a common carrier for the death of or injuries to passengers does not cease upon proof that it exercised all the diligence of a good father of a family in the selection and supervision of its employees. (Id.) The liability of a common carrier cannot be eliminated or limited by stipulation, by the posting of notices, by statements on the tickets or otherwise. (Id., Art. 1760) Although the passenger must observe the diligence of a good father of a family to avoid injury to himself (id., Art. 1761), the contributory negligence of the passenger does not bar recovery of damages for his death or injuries, if the proximate cause is the negligence of the common carrier. (Id., Art. 1762) In such case, the amount of damages shall only be equitably reduced. (Id.) It does not totally excuse the common carrier.

Lastly, a common carrier is responsible for injuries suffered by a passenger on the account of the willful acts or negligence of the other passengers or of strangers, if the employees of the common carrier through the exercise of the diligence of a good father of a family could have prevented or stopped the act or omission. (Id., Art. 1763)

[76] 472 US 400 (1985).

[77] Rules of Court, Rule 129, Sec. 2.

[78] See *Duncan Association of Detailman-PTGWO v. Glaxo Wellcome Philippines, Inc.*, G.R. No. 162994, September 17, 2004, 438 SCRA 343, 356.

[79] Rollo, p. 673.

[80] Id. at 63.

[81] *Jimenez v. National Labor Relations Commission*, G.R. No. 116960, April 2, 1996, 256 SCRA 84, 89.

[82] Rollo, p. 63.

[83] *Zarate, Jr. v. Olegario*, G.R. No. 90655, October 7, 1996, 263 SCRA 1.

[84] Id.

[85] *Philippine Airlines, Inc. v. National Labor Relations Commission*, G.R. No. 117038, September 25, 1997, 279 SCRA 445.

[86] CONSTITUTION (1987), Art. III, Sec. 1. "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."

[87] *People v. Marti*, G.R. No. 81561, January 18, 1991, 193 SCRA 57, 65.

[88] Id. at 67. The Court, in buttressing its ruling also cited the Sponsorship Speech of Commissioner Bernas in the Bill of Rights; Record of the Constitutional Commission, Vol. 1, p. 674; July 17, 1986, viz.:

"First, the general reflections. The protection of the fundamental liberties in the essence of constitutional democracy. Protection against whom? Protection against the state. The Bill of Rights governs the relationship between the individual and the state. Its concern is not the relation between individuals, between a private individual and other individuals. What the Bill of Rights does is to declare some forbidden zones in the private sphere inaccessible to any power holder."

[89] United States Constitution, Fourteenth Amendment (ratified July 9, 1868), Sec. 1. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

[90] 16B Am. Jur. 2d, Constitutional Law, § 799 citing *District of Columbia v. Carter*, 409 US 418, 93 S. Ct. 602, 34 L. Ed. 2d 613 (1973), reh'g denied, 410 US 959, 93 S. Ct. 1411, 35 L. Ed. 2d 694 (1973) and on remand to, 489 F. 2d 1272 (D.C. Cir. 1974); *Moose Lodge No. 107 v. Irvis*, 407 US 163, 92 S. Ct. 1965, 32 L. Ed. 2d 627 (1972); *Equality Foundation of Greater Cincinnati, Inc. v. City of Cincinnati*, 54 F. 3d 261, 67 Fair Empl. Prac. Cas. (BNA) 1290, 66 Empl. Prac. Dec. (CCH) ¶ 43542, 1995 FED App. 147P (6th Cir. 1995), cert. granted, judgment vacated on other grounds, 116 S. Ct. 2519, 135 L. Ed. 2d 1044, 71 Fair Empl. Prac. Cas. (BNA) 64 (US 1996), ON REMAND TO, 128 F. 3d 289, 75 Fair Empl. Prac. Cas. (BNA) 115, 1997 FED App. 318P (6th Cir.

1997); *Gallagher v. Neil Young Freedom Concert*, 49 F. 3d 1442, 98 Ed. Law Rep. 639 (10th Cir. 1995); *Mahoney v. Babbitt*, 105 F. 3d 1452 (DC Cir. 1997), reh'g denied, 113 F. 3d 219 (DC Cir. 1997).

[91] *Id.*, citing *Medical Institute of Minnesota v. National Ass'n of Trade and Technical Schools*, 817 F. 2d 1310, 39 Ed. Law Rep. 62 (8th Cir. 1987); *First Nat. Bank of Kansas City v. Danforth*, 523 S.W. 2d 808 (Mo. 1975), cert. denied, 421 US 992, 95 S. Ct. 1999, 44 L. Ed. 2d 483 (1975) and cert. denied, 421 US 1016, 95 S. Ct. 2424, 44 L. Ed. 2d 685 (1975).

[92] *Rollo*, p. 687.

[93] *Pioneer Texturizing Corporation v. National Labor Relations Commission*, G.R. No. 118651, October 16, 1997, 280 SCRA 806.

[94] *Rollo*, p. 684.

[95] *Id.* at 648. Petitioner was informed that:

"In connection with our manifestation dated 25 January 2001 you are hereby directed to physically return to work effective 01 March 2001. You are to report to the Office of the Vice-President-Airport Services.

Pending appeal you are going to be assigned to a 'substantially equivalent' position in accordance with the 18 November 1998 Decision of Labor Arbiter Ramon Valentin Reyes as modified by the 23 June Resolution of the National Labor Relations Commission.

Failure on your part to heed this order may be a ground to administratively charge you in accordance with the Company Code of Discipline, policy, rules and regulations.

CESAR B. LAMBERTE"

[96] *Id.*

[97] *Roquero v. Philippine Airlines, Inc.*, G.R. No. 152329, April 22, 2003, 401 SCRA 424.

[98] *Id.* at 430.

[99] *Id.*

[100] *Pizza Inn/Consolidated Foods Corporation v. National Labor Relations Commission*, G.R. No. L-74531, June 28, 1988, 162 SCRA 773; *Philippine Engineering Corporation v. Court of Industrial Relations*, G.R. No. L-27880, September 30, 1971, 41 SCRA 89.

[101] *San Miguel Corporation v. Lao*, 433 Phil. 890, 898 (2002); *Philippine Long Distance Telephone Company v. National Labor Relations Commission*, G.R. No. L-80609, August 23, 1988, 164 SCRA 671, 682.

[102] *Aparente, Sr. v. National Labor Relations Commission*, 387 Phil. 96, 107 (2000).

[103] *San Miguel Corporation v. Lao*, *supra* at 898; *Aparente, Sr. v. National Labor Relations Commission*, *id.*; *Philippine Long Distance Telephone Company v. National Labor Relations Commission*, *supra* at 682.

[104] *Aparente, Sr. v. National Labor Relations Commission*, *supra* at 108.

[105] *Planters Products, Inc. v. National Labor Relations Commission*, G.R. No. 78524, January 20, 1989, 169 SCRA 328; *Insular Life Assurance Co., Ltd. v. National Labor Relations Commission*, G.R. No. L-74191, December 21, 1987, 156 SCRA 740; *Soriano v. National Labor Relations Commission*, G.R. No. L-75510, October 27, 1987, 155 SCRA 124.

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